

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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NICOLE BROECKER, MICHELLE MARTINO,  
GINA PORCELLO, AMOURA BYRAN, RENA  
GELLMAN, FOTINA LAMBOS, KERRY BEN-  
JACOB, EKATERINA UDINA, ANDREA  
TICHIO, MARIANNA CIACCA-LISS, ANITA  
QUASH, KELLY DIXON, FELICIA HAGAN,  
MARITZA ROMERO, MARIA RUSCELLI,  
BETIZIADA CRUZ, FRANCINE TRAPANI,  
JEANNINE LAM, JESSICA NARCISCO,  
BRIANNA PEREZ, NICOLETTA MASULLO,  
ANASTASIA CHRISTOPOULOS, FAYE  
KOTZER, BENEDICT LOPARRINO, YADITZA  
RODRIGUEZ, RAFAEL ADRIAN TORO,  
SERINA MENDEZ, DINA HUSSEIN,  
HERENDYRA PEREYRA, ROSA ABREU, LISA  
WILLIAMS, JOAN GIAMMARINO, ANDREA  
JACKSON, MARIA KLAPAKIS, STELLA  
PORTO, TONIANN MIRAGLIA, ROSEANNA  
SILVESTRI-INCANTALUPO, JULIA A. MAVIS,  
CHRISTOPHER HANSEN, ANNETTE  
BACKOF, DIANE PAGEN, LYNN PEPE,  
STEPHANIE EDMONDS, YVONNE  
COSTELLO, DEBBY HARTZ, SORAYA  
SANCHEZ, MONIQUE MOORE, ANGELA  
VELEZ, SALLY MUSSAFI, JESSICA NICCHIO,  
DORCA GENAO, RACHEL MANISCALCO,  
JAMES HOFFMAN, SHARLAYNE  
JACOBS, CRYSTAL SALAS, FRANCES  
DIPROSSIMO, CAROLA MARTINEZ-  
VAN BOKKEM, AYSE USTARES, ELIZABETH  
FIGUEROA, DIANE BAKER-P ACIUS,  
NICOLE MOORE, ELIZABETH  
PLACENCIO, DEBBIE BERTRAM, KIMBERLI  
MADDEN, FRAN SCHMITTER, VICTORIA  
RUSSO, PAUL CIFARELLI, DANIELLE HEAL,  
SARA COOMBS-MORENO, LISA SIMO, TAMI  
BENEDUCE, ZABDIEL VALERA, NATHALIE  
CHARLES, JANELLE LOTITO, JEANEAN  
SANCHEZ, MARIE MOSLEY, TARA  
PALLADINO, DANIELLE MCGUIRE, JULIA  
HARDING, LEAH KUKLA, STEPHANIE  
FRANZESE, JULIA BALASIS-MARING, BETH  
SCHIANO, on behalf of themselves and all other

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**EMERGENCY  
AFFIRMATION OF AUSTIN  
GRAFF IN SUPPORT OF  
THE PLAINTIFFS' MOTION  
FOR A TEMPORARY  
RESTRAINING ORDER AND  
A PRELIMINARY  
INJUNCTION**

similarly situated employees of the New York City  
Department of Education,  
Plaintiffs,

-against-

NEW YORK CITY DEPARTMENT OF  
EDUCATION, MEISHA PORTER, in her official  
and individual capacities, UNITED FEDERATION  
OF TEACHERS, LOCAL 2, AMERICAN  
FEDERATION OF TEACHERS, AFL-CIO,  
MICHAEL MULGREW, in his official and  
individual capacities, JOHN DOE #1-10, in their  
official and individual capacities; and JANE DOE  
#1-10 in their official and individual capacities,  
Defendants.

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**AUSTIN GRAFF**, an attorney admitted to practice law before this Court, who is not a party to this Action, affirmed to be true under penalties of perjury says:

1. I am associated with The Scher Law Firm, LLP, the attorneys for the Plaintiffs, in the above-entitled Action, and am familiar with the relevant facts and circumstances surrounding the allegations that comprise this litigation based upon the records maintained by my office regarding this matter. I submit this Affirmation in support of the Defendants' Motion for a Preliminary Injunction pursuant to FRCP Rule 65.

2. On October 2, 2021, the Defendant NEW YORK CITY DEPARTMENT OF EDUCATION ("NYCDOE") suspended without pay all NYCDOE employees who did not receive a COVID-19 vaccination. *See, Exhibit A*, a copy of the October 2, 2021 email. The NYCDOE employees, many are tenured principals, tenured assistant principals, and tenured teachers who have statutory and constitutional rights to charges and a hearing pursuant to N.Y. Education Law § 3020-a before discipline is imposed upon them, including but not limited to suspension without pay. Yet, in violation of their statutory and constitutional rights to due process, the NYCDOE has suspended these NYCDOE employees from their jobs and suspended them without pay without any due process.

3. There are other NYCDOE employees who, through collective bargaining agreements between the NYCDOE and the employees' unions obtained contractual due process rights to charges and a hearing before discipline can be imposed upon them. Despite the collective bargaining agreement provisions providing for due process, the NYCDOE has suspended these employees without due process and has suspended them without pay in violation of the collective bargaining agreement due process rights.

4. In addition, the NYCDOE has set an arbitrary date of December 1, 2021 for the Plaintiffs, those NYCDOE employees who have not been vaccinated and who have either a statutory right to a hearing or a contractual right to a hearing, to decide whether to waive all of their rights and be placed on an unpaid leave of absence until September 2022 and if no decision is made, the NYCDOE has threatened to “unilaterally separate” those employees from the jobs.

**Exhibit A.**

5. The Plaintiffs come to this Court seeking a Temporary Restraining Order and a Preliminary Injunction reinstating them to pay status since, as discussed in the accompanying Memorandum of Law, the Plaintiffs have a constitutional property interest in their pay.

6. The Plaintiffs come to this Court seeking a Temporary Restraining Order and a Preliminary Injunction restraining and enjoining the NYCDOE from “unilaterally separat[ing]” the NYCDOE employees from their jobs for those employees who have a right to charges and a hearing pursuant N.Y. Education Law § 3020-a or the collective bargaining agreements. The Plaintiffs are asking for a Temporary Restraining Order and a Preliminary Injunction enjoining the NYCDOE from requiring the Plaintiffs and all others similarly situated from having to decide by November 30/December 1 whether or not to take a leave without pay while forfeiting their rights or face “unilateral separat[ion]” from their job.

7. In addition, upon information and belief, within the last several days, the Plaintiffs have had their access to the licensing TEACH account where the Plaintiffs can check their licensing and State information suspended. The Plaintiffs request the Court to Order, to the extent the Plaintiffs' TEACH access has been suspended, restored by the NYCDOE.

8. The Plaintiffs are asking for immediate relief because the Plaintiffs have been unconstitutionally placed on suspension without pay since October 2021 and are faced with an arbitrary deadline of November 30, 2021 that if permitted to remain in place will violate their constitutional rights to due process.

9. On November 17, 2021 by email, I provided notice to the NYCDOE and the Defendant UNITED FEDERATION OF TEACHERS, LOCAL 2, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, that the Plaintiffs will be filing the within Motion. *See, Exhibit C.*

10. For the reasons argued in this Motion, the accompanying Affidavit, and in the accompanying Memorandum of Law, the Plaintiffs request a preliminary injunction be granted.

11. The Plaintiffs rely upon the following exhibits in support of their Motion:

- (a) **Exhibit A**, is a copy of the October 2, 2021 NYCDOE email;
- (b) **Exhibit B**, is a copy of the Complaint without exhibits; and
- (c) **Exhibit C**, is a copy of the November 17, 2021 letter to the NYCDOE and UFT

12. For the reasons argued in the accompanying Memorandum of Law, and the accompanying Affidavits, the Plaintiffs' Motion for an Injunction should be granted.

**WHEREFORE**, the Plaintiffs respectfully request that the Court grant this Motion, as well as such other and further relief as may be just and proper.

Dated: Carle Place, New York  
November 17, 2021



Austin Graff